



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 13 2004

OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

Ms. Laurie Allen  
Director, Office of Protected Resources  
National Marine Fisheries Service  
National Oceanographic & Atmospheric Administration  
1315 East West Highway  
Silver Spring, MD 20910

Dear Ms. Allen:

I am writing to confirm that NOAA Fisheries and EPA have the same understanding regarding the status of the process of consultation between our agencies on a number of EPA actions involving pesticides. EPA has initiated and currently is in informal consultation with NOAA Fisheries about the potential effects on listed Pacific salmonid species from pesticides containing the following 25 active ingredients:

- |                       |                    |               |
|-----------------------|--------------------|---------------|
| • 1,3-dichloropropene | • ethoprop         | • molinate    |
| • bensulide           | • fenamiphos       | • naled       |
| • captan              | • fenbutatin oxide | • oryzalin    |
| • carbaryl            | • linuron          | • phorate     |
| • chlorothalonil      | • methamidophos    | • phosmet     |
| • chlorpyrifos        | • methidathion     | • propargite  |
| • diflubenzuron       | • methyl parathion | • thiobencarb |
| • dimethoate          | • metolachlor      | • trifluralin |
| • disulfoton          |                    |               |

Staff from our respective organizations have held numerous meetings concerning these pending consultations, dating from the early part of this year. In these meetings, EPA staff have informed your staff of EPA's intent to review, and update as appropriate, its assessments of the ecological risks of these pesticides as part of the informal consultation process, to ensure the assessments follow the approach described in EPA's "Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs, U.S. Environmental Protection Agency - Endangered and Threatened Species Effects Determinations" ("Overview document") of

-2-

metolachlor, and will continue to provide you with additional updates as we complete them. As you know, NOAA has stated that an ecological risk assessment of a pesticide developed in accordance with the Overview document "should produce effects determinations that appropriately identify actions that are not likely to adversely affect listed species or critical habitat, and that are consistent with those that otherwise would be made by [NOAA Fisheries]." See the January 26, 2004, letter from William T. Hogarth, NOAA, to Susan B. Hazen, EPA.

We also wish to bring to your attention a letter to EPA, dated July 26, 2004, from Patti Goldman and Amy Williams-Derry, attorneys for Northwest Coalition for Alternatives to Pesticides, Washington Toxics Coalition, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources (Goldman letter). This letter announces Ms. Goldman's intention to sue EPA on behalf of these organizations under the ESA, unless EPA redoes certain "no effect" and "not likely to adversely affect" determinations for 41 pesticides to incorporate the "best science" and the "pesticides' full effects." The pesticides on which EPA is currently consulting informally with NOAA Fisheries are among the pesticides identified in the Goldman letter.

EPA notes that the Goldman letter attached a draft letter from Steve Landino, Washington State Habitat Director for NOAA Fisheries' Habitat Conservation Division, addressed to Arthur-Jean Williams, Chief of the Environmental Field Branch of EPA's Field and External Affairs Division of the Office of Pesticide Programs. This draft document expresses concern that the material EPA previously submitted to NOAA Fisheries to initiate the consultation process for 28 pesticides may not have used the "best scientific or commercial data available" in conducting biological evaluations for 26 listed evolutionarily significant units ("ESUs") of Pacific salmonids. Because of this concern, the draft letter states that NOAA Fisheries does not concur with certain of EPA's findings.

EPA recognizes that the attachment to the Goldman letter was merely a draft document and that NOAA has never sent either that document or any other version to EPA. Nevertheless, EPA wishes to confirm that NOAA Fisheries has not issued a non-concurrence on EPA's "not likely to adversely affect" determinations made in connection with the pending consultations.

I would appreciate your confirmation of these understandings by return letter. Finally, I wish to reaffirm EPA's commitment to work closely with NOAA Fisheries as we proceed through consultations on these and other actions under the Endangered Species Act.

Sincerely,



James J. Jones  
Director, Office of Pesticide Programs